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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,953	02/25/2004	Allan R. Jones JR.	1-24035	3792
4859	7590	12/15/2004	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			PATEL, MITAL B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,953

Applicant(s)

JONES ET AL.

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "43" has been used to designate both tab and extension, see page 10 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "157" has been used to designate both exterior portion and interior portion, see page 16 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference characters 179, 184, 185, 189, 191, and 192. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 7, 9, and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

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invention. Claim 7 sets forth a pump being mounted in both the pump opening in the body and in a valve opening in the body. The specification nor the drawings teach or disclose such a feature. One of skill in the art would not know how to make and/or use a nasal mask having the set forth feature.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 8, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Demi (US 4,513,741).

8. **As to claim 1**, Demi teaches a cushion for removably attaching to a nasal mask for forming a seal between the mask and a user's face around the user's nose, said seal including an inflatable chamber **23,29** adapted to extend during use between the mask body around at least a portion of a nose receiving opening in the mask body and a mask user's face, a manually operated pump **46** permanently connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a normally closed manually operated pressure release valve **47** permanently connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated.

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9. **As to claim 2**, Demi teaches a cushion for a nasal mask, further including a resilient open cell foam (**that formed by 29**) at least partially filling said inflatable chamber.

10. **As to claim 3**, Demi teaches a cushion for a nasal mask, wherein said inflatable chamber is shaped to extend continuously around a nose opening when attached to a mask body (**See Col. 4, lines 10-18**).

11. **As to claim 4**, Demi teaches a cushion for a nasal mask, wherein said inflatable chamber is shaped to extend continuously around a nose opening when attached to a mask body (**See Col. 4, lines 10-18**).

12. **As to claim 5**, Demi teaches a nasal mask **10** including a body having a rim **11,12** defining an opening adapted to receive a user's nose, a cushion attached to said rim, said cushion having an inflatable chamber **23,29** extending at least partially around said rim, a manually operated pump **46** permanently connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a release valve **47** permanently connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated.

13. **As to claim 6**, Demi teaches a nasal mask, further including a resilient open cell foam (**that formed by 29**) at least partially filling said inflatable chamber.

14. **As to claim 8**, Demi teaches a nasal mask, wherein said pump includes a resilient dome member **48** defining a chamber which is collapsed when said pump is actuated, an air inlet connecting through an inlet check valve **52** to said chamber, and an air outlet **68** connected from said chamber through an outlet check valve **67** and a

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passageway to said inflatable tube.

15. **As to claim 11**, Demi teaches a nasal mask including a body **10** having a rim **12,11** defining an opening adapted to receive a user's nose, a cushion assembly removably attached to said body to extend around said rim, and wherein said cushion assembly includes an inflatable chamber **23,29**, a manually operated pump **46** connected to said inflatable chamber, said pump delivering air to said inflatable chamber when actuated, and a normally closed release valve **47** connected to said inflatable chamber, said release valve venting air from said inflatable chamber when manually actuated.

Conclusion


16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6494206, US 6467483, US 6123071, US 5560354, US 5243971, US 5121745, US 4971051, US2749910, and US 2666432.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 12/10/04
Mital B. Patel
Examiner
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